

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

RP.No. 518 of 2007(E)

IN W.P.(C) NO..36377 OF 2004

PETITIONERS: THIRD PARTIES:

1. ARUMUGHAN ACHARI, MADATHIL PARAMBIL HOUSE,
MATHIL BHAGOM, THIRUVALLA.
2. GANAPATHY NAMPOOTHIRY, KIZHAKKE POOMTHOTTAM,
MATHILBHAGOM, THIRUVALLA.
3. S.MAHADEVA SHARMA, KADUVALLIL ILLOM,
MATHILBHAGOM, THIRUVALLA.

BY ADV. SRIMVS.NAMBOOTHIRY

RESPONDENTS: PETITIONER & RESPONDENTS:

1. C.N.SUKUMARAN NAIR, S/O.NARAYANAN NAIR,
BINDU VILLA, CHOTTUPARA, IDUKKI DISTRICT.
2. TRAVANCORE DEVASWOM BOARD, REPRESENTED BY
ITS SECRETARY, OFFICE OF THE TRAVANCORE
DEVASWOM BOARD, DEVASWOM BUILDING,
NANDANCODE, THIRUVANANTHAPURAM.
3. DISTRICT COLLECTOR, COLLECTORATE,
PATHANAMTHITTA.
4. DEVASWOM COMMISSIONER, OFFICE OF THE
DEVASWOM COMMISSIONER, TRAVANCORE DEVASWOM
BOARD, DEVASWOM BUILDING,
NANDANCODE, THIRUVANANTHAPURAM.

5. ASSISTANT DEVASWOM COMMISSIONER,
OFFICE OF THE ASST. DEVASWOM COMMISSIONER,
THIRUVALLA GROUP, THIRUVALLA.
6. REVENUE DIVISIONAL OFFICER,
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
THIRUVALLA.
7. DISTRICT SUPERINTENDENT OF SURVEY & LAND RECORDS,
OFFICE OF THE DISTRICT SUPERINTENDENT OF SURVEY &
LAND RECORDS, PATHANAMTHITTA.
8. DR.R.SASINDRA BABU, GOKULAM,
PUTHUPALLY P.O., KAYAMKULAM.

BY ADV. SRI.S.SUBHASH CHAND
SENIOR GOVERNMENT PLEADER SMT.MEERA
ADV. SRI.G.UNNIKRISHNON
SRI.P.PARAMESWARAN NAIR
SRI.K.P.SREEKUMAR
SRI.R.GIREESH VARMA
SRI.K.N.VENUGOPALA PANICKER, SC, TDB

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

**R.P.NO. 518 OF 2007 in
W.P.(C). NO. 36377 OF 2004**

Dated this the 19th June, 2007

ORDER

K.T.SANKARAN,J.

The review petitioners, who were not parties to W.P.(C) No.36377 of 2004, seek to get the judgment dated 4.4.2006 in the Writ Petition reviewed.

2. The Writ Petition was filed by a devotee of Sree Vallabha Maha Temple, Thiruvalla for a direction to respondents 2 and 5 in the Writ Petition (The District Collector and The Revenue Divisional Officer) to evict the encroachers in the immovable properties belonging to the Temple. There were several proceedings before the Division Bench of this Court hearing Devaswom matters. Annexure VI order dated 16.12.2002 in C.M.P.No.6878 of 2001 is one such proceeding, wherein this Court stated that the report and plan prepared by the Superintendent of Survey and Land Records shall form part of the record. A direction was also issued to the Government to take action under the Land Conservancy Act against the encroachers, after affording them an opportunity of being heard.

3. It would appear that subsequently W.P.(C) No.38593 of 2003 was filed by the review petitioners, in which Annexure VIII judgment, dated 30.1.2004, was passed by this Court. It was clarified in Annexure VIII judgment thus:

“5. The main argument advanced by the learned counsel for the petitioners Sri.M.V.S.Nampoothiry is that in Ext.P10 order, it stated that the report and plan sent by the Superintendent of Survey and Land Records will form part of the order. According to them, the Revenue Authorities are taking the view that this Court has approved the plan and report. We are of the view that this argument is not correct. We have repeatedly stated that this Court has not gone into the question whether the report and plan are correct or not. This Court only reiterated the contention raised by the petitioners in those cases and this Court has never held that the petitioners are the encroachers. During the course of hearing, we directed the Revenue Authorities to produce the files. When the matter came up for hearing yesterday, we were told that the Revenue Divisional Officer, Thiruvalla has issued notice to the petitioners that their appeals will be heard on 31.1.2004. In the light of the fact that the appeals are pending, it is not necessary for us to go into the merits of the matter.”

By Annexure VIII judgment, this Court directed that the District Collector shall hear the appeals filed by the review petitioners challenging the Land Conservancy proceedings and dispose of the same.

4. After Annexure VIII judgment, the matter was heard by the Revenue Divisional Officer, Thiruvalla as directed by the District Collector

and Annexure IX order, dated 5.1.2005 was passed by him, whereby a direction was issued to further survey the property by an officer higher in rank to the District Superintendent of Surveys.

5. It was thereafter that W.P.(C) No.36377 of 2004, filed by one C.N.Sukumaran Nair, was heard and disposed of by the judgment sought to be reviewed. The grievance of the review petitioners is that though this Court in the judgment sought to be reviewed took note of Annexure VI order, Annexure VIII judgment was not taken note of and thereby prejudice is caused to the petitioners. This submission made by the learned counsel for the review petitioners is not correct. Paragraph 8 of the counter affidavit filed in W.P.(C) No.36377 of 2004, dated 7.1.2005, reads as follows:

“8. In the judgment dated 30-1-2004 in W.P.(C) No.38593/2003, the Honourable High Court have ordered that the hearing of appeal by the Revenue Divisional Officer, Thiruvalla who was former Tahsildar, Thiruvalla was not proper and hence District Collector may hear the appeal or he may delegate to hear the appeal by some other Revenue Divisional Officer. As per the order of the Court, the present Revenue Divisional Officer was directed to hear the appeals as per rules and the case is under trial in the Revenue Divisional Office, Thiruvalla. The case was posted on 5-1-2005. Revenue Divisional Officer, Thiruvalla has now reported that there is discrepancies in Survey work already done and that has to be surveyed by a Survey Officer above the rank of Superintendent

of Survey, Pathanamthitta, with reference to Litho plan and re-survey records.”

It was taking note of these averments which related to Annexure VIII judgment and Annexure IX order dated 5.1.2005 that the judgment sought to be reviewed was passed. In spite of the fact that Annexure VI order states that the report made by the District Surveyor shall form part of the records, taking note of Annexure VIII judgment, the counter affidavit and the submission made by all concerned, this Court directed that the Director of Surveys, Thiruvananthapuram, who was impleaded as additional respondent No.8 suo motu, or any other officer of his choice, not below the rank of District Superintendent of Surveys, shall conduct the survey with notice to all affected parties within three months. It was also directed that appropriate action under the Land Conservancy Act shall also be taken against the persons who were found in unauthorised occupation of the Temple property. The contention put forward by the review petitioners that Annexure VIII judgment was not taken note of by this Court while disposing of the Writ Petition which is sought to be reviewed, is not correct. All the materials placed before Court were taken note of while disposing of the Writ Petition. No prejudice would be caused to the Review Petitioners

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if the judgment sought to be reviewed is implemented. The Review Petitioners have no grievance against Annexure IX order dated 5.1.2005 passed by the Revenue Divisional Officer. By Annexure IX order, a fresh survey work was ordered to be conducted. The judgment sought to be reviewed also directs a survey demarcation to be made. Notice to all affected parties shall be given as per the directions in the judgment, before conducting survey. The Review Petitioners cannot have any grievance if survey is conducted. They are entitled to get notice before conducting the survey. No grounds are made out to review the judgment.

The Review Petition is accordingly dismissed.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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